IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

Crl.Rev.Pet.No. 2437 of 2007()

CRA.65/2004 of SESSIONS COURT, PATHANAMTHITTA
CC.1069/2002 of JUDL.MAGIT. OF FIRST CLASS COURT-I, PATHANAMTHITTA

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REVN. PETITIONER: APPELLANT IN CRA/ACCUSED IN CC:

MOHAMMED HANEEFA, AGED 52 YEARS,
SON OF YOOSEPH RAWTHER, RESIDING AT ELAVUMOOTTIL-HOUSE, KOLLAKADAVU P.O., ALAPPUZHA DISTRICT.

BY ADV. SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS
SRI.AJITH MURALI

RESPONDENTS: COMPLAINANT/2ND RESPONDENT IN CRA:

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1. HARIKUTTAN NAIR, AGED ABOUT 42 YEARS,
RESIDING AT PULINILKKUNNATHIL HOUSE,
ELANTHOOR P.O.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR P.N. SUKUMARAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 22/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

Crl.R.P.No. 2437/2007

Dated this 22nd day of June, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.1069/2002 on the file of the J.F.C.M-I, Pathanamthitta, challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the appellant in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b)

of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am inclined to modify the sentence imposed on the revision petitioner. Accordingly if the revision petitioner pays to the first respondent, complainant, a sum of **Rupees Eighty Five Thousand** by way of compensation under Section 357(3) Cr.P.C within **three months** from today, he need undergo only imprisonment till the rising of the Court. If the revision petitioner commits default in making the

payment as aforesaid, the sentence imposed on him by the Courts below shall be revived.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V.RAMKUMAR,
JUDGE

mrcs